

REMARKS

I. Status of the Claims

Claims 1-18 are pending. By this amendment, claims 3, 4, 8, and 10-18 have been cancelled without prejudice, and claims 1, 2, 5-7, and 9 have been amended. No new matter has been added by this amendment. While the status of previously pending claims 16-18 was not indicated by the Examiner on the January 28, 2004, Advisory Action, Applicants deem this a moot point as those claims are cancelled herein.

II. Non-Entry of December 22, 2003, Amendment After Final

The Examiner indicated in the January 28, 2004, Advisory Action that he has not entered the amendment filed on December 22, 2003 because they raise new issues. Applicants point out that the only amendment made in this paper was the deletion of an extraneous period at the end of claim 3. Applicants respectfully assert that this correction of a clerical error does not raise new issues that would require further consideration and/or search. Therefore, Applicants respectfully request entry of this Amendment and, for the Examiner's convenience, have again made the correction in the amendment to claim 3 filed herewith.

II. Allowability of Claims 1-3 and 5-9

Applicants would like to thank the Examiner for his indication of the allowability of claims 1-3 and 5-9. Applicants have amended claims 1, 2, 5-7, and 9, and cancelled claims 3 and 8, eliminating non-elected subject matter.

III. Rejections under 35 U.S.C. § 112, Second Paragraph

A. “Mixtures of Any Such Compounds in Any Ratio”

The Examiner has indicated, in his rejection under 35 U.S.C. § 112, second paragraph, that “[c]laim 1 represents a compound only, but still recites: ‘mixtures of any such compounds’” Advisory Action at 3.

Applicants disagree that claim 1 covers only one compound. Applicants understand that claim 1 recites “A compound of the formula (I)” (emphasis added), but point out that the scope of formula (I), and thus claim 1, covers several different possible compounds.

Moreover, the claim is written in the alternative, such that what is claimed is “A compound of the formula (I) . . . or a mixture of any such compounds in any ratio.” As such, the claim clearly and definitively covers more than just the compound of formula (I), and the Examiner has not established that one of ordinary skill in the art would not understand the scope of the claim. Therefore, a mixture, as claimed, is not indefinite under 35 U.S.C. § 112, second paragraph, and Applicants respectfully request reconsideration of this ground for rejection. As Applicants have pointed out, the Examiner has provided no basis for this rejection.

B. “Pharmaceutical Preparation”

Claim 9 has been amended to recite a “pharmaceutical composition” instead of a “pharmaceutical preparation.” As Applicants previously stated on the record, a preparation and a composition are synonymous. See December 22, 2003, Amendment at 22. Therefore, this amendment does not alter the scope of the invention in any way. While Applicants disagree that a pharmaceutical preparation is indefinite under 35

U.S.C. § 112, as has been explained on the record, the claim has been amended solely in an effort to advance prosecution of this application.

IV. Conclusion

Applicants respectfully request that this Amendment under 37 C.F.R. § 1.116 be entered by the Examiner, placing claims 1, 2, 5-7, and 9 in condition for allowance.

Applicants submit that the proposed amendments of claims 1, 2, 5-7, and 9 do not raise new issues or necessitate the undertaking of any additional search of the art by the Examiner, since all of the elements and their relationships claimed were either earlier claimed or inherent in the claim as examined. Therefore, this Amendment should allow for immediate action by the Examiner.

Finally, Applicants submit that the entry of the amendment would place the application in better form for appeal, should the Examiner dispute the patentability of the pending claims.

In view of the foregoing remarks, Applicants submit that this claimed invention, as amended, is neither anticipated nor rendered obvious in view of the prior art references cited against this application. Applicants therefore request the entry of this Amendment, the Examiner's reconsideration of the application, and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge
any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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Dated: May 3, 2004

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